Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal against Order No. 340 of 2003

United India Insurance Company Ltd.,
through its Divisional Manager,
Divisional Office, Tikonia, Nainital Road,
Haldwani, District Nainital. .... **Appellant.**

Versus

1. Master Vikaram Singh S/o Sri Shyam Singh,
   R/o Doctor Gunj, Daakpathar Road,
   Vikas Nagar, District-Dehradun.
   ..... Claimant/Respondent

2. Chandra Prakash Grover
   S/o Sri Harnam Das Grover,
   R/o Vikas Nagar, Dehradun.
   ..... Opp.party/Respondent.

.....

Sri Naresh Pant, learned counsel for the appellant,
Sri L.K. Tiwari & Sri B.P.Nautiyal, learned counsel for the respondents.

Date: 2nd September, 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the United India Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 26.07.2003 passed by the Motor Accident Claims Tribunal/II Additional District Judge, Dehradun in Motor Accident Claim Case No. 186 of 1999, Master Vikram Singh Versus Rajendra Singh and others, whereby the claim petition was decreed against the Opp.party-United India Insurance Company for a compensation of Rs.2,81,360/- alongwith interest at the rate of 9% per

annum from the date of claim petition till the date of actual payment.

2- Brief facts giving rise to this appeal are that on 25.10.1999 claimant Master Vikaram Singh was going towards his field from his house. He was on foot at his left side. At the same time Bus NO. UP 07-J-6746 was going to Vikas Nagar side from Dak Paththar. The said bus was being driven by its driver-opp.party No.1 rashly and negligently. When the claimant reached Nawabgarh crossing, the driver of the said bus lost his control and it dashed with the claimant due to which he sustained grievous injuries. The injured-claimant was taken to Hospital where he got medically treated. The claimant was 10 years old and he was studying in Class-IV at the time of accident. The said bus was owned by Opp.party No.2 and insured with Op.party No.3 United India Insurance Company Ltd. The claimant filed claim petition before the Tribunal due to injuries received in the said accident.

3- The Opp.party No.1 died during the proceeding of the claim petition. The Opp.party No.2 did not turn up despite service and case proceeded ex parte against him. The Opp.party No.3-Insurance Company field its written statement denying all the allegations of the claim petition. However, the insurance of the offending bus was admitted with it. The Tribunal, on the basis of pleadings of the parties, framed necessary issues and after recording evidence adduced by the parties allowed the claim petition accordingly. Feeling aggrieved, the United India Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicles Act and, therefore, argued that the Tribunal has

not properly appreciated the evidence on record to determine the quantum of compensation. It has also been submitted by the learned counsel for the appellant that application under Sec. 170 of the Motor Vehicles Act was moved before the Tribunal for permission but the learned counsel could not indicate that the permission was granted or not to contest the case on al the grounds. In this case, though the owner of the offending vehicle has not contested the case before the Tribunal but there is no finding that there has been collusion between the owner of the offending vehicle and the claimant. The documentary evidence filed by the claimant in support of his case shows that the bus in question was plying by a driver who was holding a valid driving licence and also it was having a valid permit and insurance. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be field by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court's judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, page 456***. In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussion, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.

(B .S.Verma, J.) **(P.C. Verma, J.)**

02.09.2004
P.Singh